

July 3, 2019

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commissions
445 12th Street, S.W.
Washington, D.C. 20554

Re: Improving Competitive Broadband Access to Multiple Tenant Environments, GN Docket No. 17-142; Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council, MB Docket No. 17-91

Dear Ms. Dortch:

On Tuesday, July 2, 2019, the undersigned counsel from INCOMPAS met by phone with Jamie Susskind, Chief of Staff to Commissioner Carr, to discuss the public draft of the Commission's *Notice of Proposed Rulemaking and Declaratory Ruling* in the above-referenced proceedings.¹

INCOMPAS members are building next generation networks, including fiber and mobile networks that connect and bring innovative competitive options to residential and business customers in multiple tenant environments ("MTEs") like apartment buildings, condominium complexes, assisted living facilities, and commercial properties occupied by multiple entities. In the meeting, INCOMPAS declared its support for the *Draft NPRM* and commended the Commission for taking meaningful action to enable more fixed broadband competition for consumers who live in MTEs. Addressing the practices that have denied competitive providers access to MTEs will ensure these customers—whether they be millennials on a starter budget or retired Americans on a fixed budget—are capable of exercising their choice of service providers and reaping the benefits of competition, such as lower prices and higher speeds.

Since the 2017 *Notice of Inquiry* in this proceeding, INCOMPAS has urged the FCC to examine certain commercial practices that have an exclusory effect on competitive providers of broadband, voice, and video services. Incumbent communications providers and landlords have used graduated revenue sharing as well as wiring and rooftop exclusivity arrangements to circumvent the access rules and exclude competitive providers from MTEs. Similarly, exclusive marketing arrangements are barriers to entry and dilute the odds of a competitive provider being

¹ *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, *Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council*, MB Docket No. 17-91, *Draft Notice of Proposed Rulemaking and Declaratory Ruling*, FCC-CIRC1907-04 ("*Draft NPRM*" or "*Draft Declaratory Ruling*").

able to achieve penetration rates that bring an acceptable return on their investment. INCOMPAS looks forward to refreshing the record in this rulemaking proceeding and providing additional information about how the association's members have struggled to gain access to MTEs as a result of these anticompetitive arrangements.

With respect to the *Draft Declaratory Ruling*, INCOMPAS expressed support for the Commission's decision to encourage "state and local experimentation regarding policies to promote broadband and video competition in MTEs," like mandatory access laws that have been adopted across the country.² Mandatory access laws are enabling competitive providers' entry into MTEs, and, in turn, giving consumers access to more service offerings and the providers of their choice. These provisions, for example, have allowed an INCOMPAS member serving the San Francisco area to gain entry to over 1,000 buildings where tenants, interested in the provider's affordable, gigabit broadband offering, requested its service. INCOMPAS, therefore, specifically urges the Commission to reject calls to change the scope of the *Draft Declaratory Ruling* to preempt other aspects of Article 52 of the San Francisco Police Code, including the mandatory access provisions.

On the Commission's narrow preemption of in-use wire sharing, INCOMPAS noted that its members covered by the ordinance deploy their own facilities upon gaining access to an MTE and do not engage in in-use wiring sharing. Because the association is unaware of any other providers that employ this tactic, preemption, as a practical matter, may be unnecessary. INCOMPAS cautioned that the partial preemption of Article 52, despite the narrowness of the Commission's ruling, could deter other cities and local governments from passing mandatory access laws. To counterbalance this unintended consequence, INCOMPAS encouraged the Commission to ensure that cities and municipal governments are educated on the agency's decision not to preempt mandatory access laws in Section A of the *Draft Declaratory Ruling*.

If you have any questions about this filing, please feel free to contact me.

Respectfully submitted,

/s/ Christopher L. Shipley

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cc: Jamie Susskind

² *Draft Declaratory Ruling* at 23, ¶ 40.